

THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION
AND LIABILITY ACT (CERCLA)

R6-14-43. Planning and Implementing Off-Site Response Actions

1. AUTHORITY. Pursuant to Section 121(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9621(d)(3), and in accordance with 40 CFR 300.440 (the "Off-site Rule"), the authority to:

a. Determine the acceptability, and continued acceptability, of any facility being considered for the off-site treatment, storage, or disposal of CERCLA waste (40 CFR 300.440(b)(1));

b. Issue an initial determination of unacceptability if a facility does not satisfy the criteria for releases and relevant violations, notify the facility owner or operator of the initial determination of unacceptability, and notify the responsible agency in the State in which the facility is located of the unacceptability (40 CFR 300.440(d)(1));

c. Shorten, or eliminate the 60-day review period in extraordinary circumstances, and notify the facility owner or operator of the date of unacceptability (40 CFR 300.440(d)(9));

d. Provide for, and conduct, an informal conference if requested by the owner or operator of a facility in receipt of an initial determination of unacceptability (40 CFR 300.440(d)(4));

e. Decide if the information provided either at the informal conference or in written comments is sufficient to show that a determination of acceptability would be appropriate (300.440(d)(6));

f. Extend the 60-day review period if more time is required to review the submission, and notify the facility owner or operator of the extension (40 CFR 300.440(d)(8)); and

g. Reconsider an initial determination of unacceptability for a facility and notify the facility owner or operator of the decision (40 CFR 300.440(d)(7)).

Delegation of Authority from the
Regional Administrator

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R6-14-43. Planning and Implementing Off-Site Response Actions(Contd.)

2. TO WHOM DELEGATED.

a. The authority to determine the acceptability, and continued acceptability, of any facility being considered for the off-site treatment, storage, or disposal of CERCLA waste (40 CFR 300.440(b)(1)) is delegated sequentially through the Compliance Assistance and Enforcement Division Director, the Hazardous Waste Enforcement Branch Chief, and the Arkansas/Louisiana/Oklahoma/New Mexico Section Chief to the Regional Off-site Contact (ROC). This authority is also delegated sequentially through the Superfund Division Director to the Chief of the Superfund Response and Prevention Branch with the limitation that the Chief may only exercise this authority during a time period when the ROC will be on leave or otherwise absent from the Region 6 offices for a period of more than five working days. Both the ROC and the Chief of the Superfund Response and Prevention Branch must have the concurrence of the Regional Counsel attorney assigned to Off-site Rule matters in order to exercise this authority.

b. The authority to issue an initial determination of unacceptability if a facility does not satisfy the criteria for releases and relevant violations, notify the facility owner or operator of the initial determination of unacceptability, and notify the responsible agency in the State in which the facility is located of the unacceptability (40 CFR 300.440(d)(1)) is delegated sequentially through the Compliance Assistance and Enforcement Division Director, and the Hazardous Waste Enforcement Branch Chief, to the Arkansas/Louisiana/Oklahoma/New Mexico Section Chief. The Arkansas/Louisiana/Oklahoma/New Mexico Section Chief must have the concurrence of the Regional Counsel attorney assigned to Off-site Rule matters in order to exercise this authority.

c. The authority to shorten, or eliminate the 60-day review period in extraordinary circumstances, and notify the facility owner or operator of the date of unacceptability (40 CFR 300.440(d)(9)) is delegated to the Compliance Assistance and Enforcement Division Director with the concurrence of the Regional Counsel attorney assigned to Off-site Rule matters.

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R6-14-43. Planning and Implementing Off-Site Response Actions (Contd.)

d. The authority to provide for, and conduct, an informal conference if requested by the owner or operator of a facility in receipt of an initial determination of unacceptability (40 CFR 300.440(d)(4)) is delegated sequentially through the Compliance Assistance and Enforcement Division Director, the Hazardous Waste Enforcement Branch Chief, and the Arkansas/Louisiana/Oklahoma/New Mexico Section Chief to the Regional Off-site Contact (ROC) with the concurrence of the Regional Counsel attorney assigned to Off-site Rule matters.

e. The authority to decide if the information provided either at the informal conference or in written comments is sufficient to show that a determination of acceptability would be appropriate (300.440(d)(6)) is delegated to the Compliance Assistance and Enforcement Division Director with the concurrence of the Regional Counsel attorney assigned to Off-site Rule matters.

f. The authority to extend the 60-day review period if more time is required to review the submission, and notify the facility owner or operator of the extension (40 CFR 300.440(d)(8)) is delegated to the Compliance Assistance and Enforcement Division Director with the concurrence of the Regional Counsel attorney assigned to Off-site Rule matters.

g. The authority to reconsider an initial determination of unacceptability for a facility and notify the facility owner or operator of the decision (40 CFR 300.440(d)(7)) is delegated to the Compliance Assistance and Enforcement Division Director with the concurrence of a Regional Judicial Officer. All review including without limitation Regional Judicial Officer review of an initial determination of unacceptability shall be based exclusively on the written administrative record (40 CFR 300.440(d)(7)).

3. LIMITATIONS. Limitations are as described in paragraph 2 (a) through (g) above, and in the following paragraph.

As stated in paragraph 2(b), above, the authority for issuing the initial determination of unacceptability is delegated to the Arkansas/Louisiana/Oklahoma/New Mexico Section Chief. If, however, the initial determination of unacceptability also includes a decision to shorten or eliminate the 60-day review period, the Compliance Assistance and Enforcement Division Director shall issue the initial determination of unacceptability (with the concurrence of the Regional Counsel attorney assigned to Off-site Rule matters.)

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4. ADDITIONAL REFERENCES.

- a. Executive Order 12580, Superfund Implementation, January 23, 1987.
- b. Executive Order 13016, August 28, 1996.

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